IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1284 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASHOK CHANDULAL

Appearance:

MR UA TRIVEDI, APP for Petitioner

MR MJ BUDHBHATTI, L.A. rendered legal assistance

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. This appeal, by leave, arises from the impugned judgment and order of acquittal dated 31/8/1981 rendered by the Ld. Judicial Magistrate First Class, Jamnagar in Criminal Case No. 1481/1980.

2. The respondent, for short 'the accused', faced charge for the offence punishable uSs. 279, 304 A, 337, and 338 of the Indian Penal Code and sections 112 and 116 of the Motor Vehicles Act on the ground that at about 10.30 O'clock in the morning of 3/2/1980 he was plying his rickshaw bearing no. GTP 610 with four passengers seated therein at a very great speed and with gross negligence while going through the railway crossing near Hudco while going from Ranjitnagar towards Nagedi, inspite of the fact that railway train was passing through the track while blowing whistle. This resulted in the railway engine dashing against rickshaw resulting in death of two passengers and injuries to other two passengers.

3. Upon hearing of the matter on evidence on account of the fact that the accused pleaded not guilty, the Ld. Magistrate came to the conclusion that the prosecution failed to establish any of the charges against the accused. In the result, there was acquittal of the accused which is the subject matter of this appeal.

4. I have heard Mr. U.A. Trivedi, Ld. APP for the State and Mr. M.J. Budhbatti, Ld. Advocate, who rendered legal assistance to the accused. I have gone through the evidence which has been adduced before the Ld. Magistrate. Following two conclusions surface on the face of the prosecution evidence :

I. The injured eye witness admitted that the railway cro

the railway train was coming on the track.

II. The accused tried to see that the rickshaw cleared crossing the track. But on account of unusual pit between the two sides of the track, the rear wheels of the rickshaw got stuck at the very point of time when the engine dashed against the rickshaw.

On going through the acquittal order impugned in this appeal it would appear that the aforesaid two factual aspects of the matter have been considered by the Ld. Magistrate for rendering the acquittal. In that view of the matter, bearing in mind the facts of the case, this acquittal appeal is required to be dismissed. Order accordingly.

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PVR.